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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Sandra Howell,

10 Plaintiff,

11 v.

12 Transform SR LLC,

13 Defendant.
14

No. CV-24-00227-TUC-JCH

ORDER

15 Pro se Plaintiff Sandra Howell has filed a Complaint pursuant to 42 U.S.C. § 12101
16 (the Americans with Disabilities Act or "ADA") and the Arizona Civil Rights Act (Doc. 1);
17 and an Application to Proceed In District Court Without Prepaying Fees or Costs (Doc. 2).
18 The Court will deny Plaintiff's Application and dismiss the Complaint with leave to amend.

19 **I. Application to Proceed in District Court Without Prepaying Fees or Costs**

20 In her Application, Plaintiff indicates she has insufficient funds to pay the filing fee
21 for this action. Upon review of Plaintiff's Application, Plaintiff's monthly income appears
22 sufficient to pay the filing fee. *See* 28 U.S.C. §§ 1914, 1915(a)(1). Further, the Complaint
23 as pleaded "is of dubious merit." *Tripathi v. First Nat. Bank & Tr.*, 821 F.2d 1368, 1370
24 (9th Cir. 1987). Thus, the Court will deny Plaintiff's Application.

25 **II. Statutory Screening of In Forma Pauperis Complaints**

26 Under 28 U.S.C. § 1915(e)(2), notwithstanding the payment of any filing fee, the
27 Court shall dismiss the case "if the court determines that . . . (B) the action . . . (i) is frivolous
28 or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks

1 monetary relief against a defendant who is immune from such relief."

2 A pleading must contain a "short and plain statement of the claim showing that the
3 pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
4 not demand detailed factual allegations, "it demands more than an unadorned, the-
5 defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678
6 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere
7 conclusory statements, do not suffice." *Id.*

8 "[A] complaint must contain sufficient factual matter, accepted as true, to 'state a
9 claim to relief that is plausible on its face.'" *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
10 550 U.S. 544, 570 (2007)). A claim is plausible "when the plaintiff pleads factual content
11 that allows the court to draw the reasonable inference that the defendant is liable for the
12 misconduct alleged." *Id.* "Determining whether a complaint states a plausible claim for
13 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
14 experience and common sense." *Id.* at 679. Thus, although a plaintiff's specific factual
15 allegations may be consistent with a constitutional claim, a court must assess whether there
16 are other "more likely explanations" for a defendant's conduct. *Id.* at 681.

17 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
18 must "continue to construe pro se filings liberally." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th
19 Cir. 2010). A "complaint [filed by a pro se litigant] 'must be held to less stringent standards
20 than formal pleadings drafted by lawyers.'" *Id.* (quoting *Erickson v. Pardus*, 551 U.S. 89,
21 94 (2007) (per curiam)).

22 If the Court determines that a pleading could be cured by the allegation of other
23 facts, a pro se litigant is entitled to an opportunity to amend a complaint before dismissal
24 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc).

25 **III. Complaint**

26 In her Complaint, Plaintiff asserts claims¹ based on violations of her rights under

27
28 ¹ Plaintiff initially alleges Defendant also violated the Arizona Civil Rights Act, but her claims refer only to the ADA. Plaintiff may choose to remedy this deficiency on amendment.

1 the Americans with Disabilities Act. Doc. 1 at 4. Plaintiff names her former employer,
 2 Transform SR LLC d/b/a Sears Holding, as Defendant. Plaintiff is seeking damages and
 3 all other relief deemed just under the circumstances. Doc. 1 at 5.

4 Plaintiff worked at Defendant's call center from approximately July to
 5 November 2022. Compl. ¶¶ 6, 17. Plaintiff alleges that, during her employment, Defendant
 6 discriminated and retaliated against Plaintiff by denying her requests for accommodation,
 7 placing her on probation, and terminating her employment. Compl. ¶¶ 7–28.

8 **A. Discrimination Under the ADA**

9 To state a prima facie claim of discrimination under the ADA, a plaintiff must show
 10 that she: (1) is disabled within the meaning of the ADA, (2) is qualified (i.e., able to
 11 perform the essential functions of the job with or without reasonable accommodation); and
 12 (3) suffered an adverse employment action because of her disability. *Nunies v. HIE*
 13 *Holdings, Inc.*, 908 F.3d 428, 433 (9th Cir. 2018).

14 Plaintiff's Complaint fails to allege she is disabled within the meaning of the ADA.
 15 Plaintiff mentions having asthma, taking frequent trips to the bathroom, and requiring
 16 blood pressure medication. Compl. ¶¶ 8, 13. But Plaintiff does not allege that these
 17 conditions are disabilities within the meaning of the ADA. All references Plaintiff makes
 18 to her "disabilities" in the Complaint are vague and conclusory. *See, e.g.*, Compl. ¶¶ 7, 18,
 19 19, 24, 27.

20 Plaintiff's Complaint fails to allege she was able to perform the essential functions
 21 of the job with or without reasonable accommodation. Plaintiff states only that she asked
 22 for accommodations. Compl. ¶¶ 7, 10–11. Plaintiff does not allege that she was otherwise
 23 able to perform her job, that she would have been able to perform her job with the requested
 24 accommodations, or that the requested accommodations were reasonable.

25 Plaintiff's Complaint fails to allege she suffered an adverse employment action
 26 *because* of her disability. Plaintiff states she was denied reasonable accommodations,
 27 placed on probation, and terminated from her employment due to her disability. Compl.
 28 ¶¶ 18–19, 22–24, 27–28. But Plaintiff does not adequately plead that these adverse actions

1 happened *because* of her disability. On the contrary, Plaintiff states she left work early to
 2 pick up medication, she was taking frequent bathroom breaks, and she was out for two
 3 weeks due to being sick—all "more likely explanations" for the adverse employment
 4 actions than discrimination. *See Iqbal*, 556 U.S. at 681.

5 **B. Retaliation Under the ADA**

6 To establish a *prima facie* case of retaliation under the ADA, an employee must
 7 show that: (1) she engaged in a protected activity; (2) she suffered an adverse employment
 8 action; and (3) there was a causal link between the two. *Brown v. City of Tucson*, 336 F.3d
 9 1181, 1186–87 (9th Cir. 2003).

10 Plaintiff alleges she was subject to "different terms and conditions of employment
 11 and a hostile intimidating work environment" because of her disabilities and because she
 12 requested reasonable accommodations. Compl. ¶ 19. Requesting reasonable
 13 accommodations and reporting discrimination are protected activities, however Plaintiff
 14 fails to specify what the different employment terms were or how the workplace was
 15 hostile. Plaintiff alleges she was denied reasonable accommodations, placed on probation,
 16 and ultimately terminated from her employment, Compl. ¶¶ 12, 18–19, 27–28. These are
 17 all adverse employment actions; however, Plaintiff's descriptions of these actions are vague
 18 and conclusory. Further, Plaintiff fails to show a causal link between any protected activity
 19 and adverse employment action. The Complaint fails to show that the adverse employment
 20 actions were *because* of Plaintiff's disability and not merely due to, for example, leaving
 21 work early, taking frequent breaks, and being absent for two weeks.

22 **IV. Failure to State a Claim – Leave to Amend**

23 Although pro se pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519,
 24 520-21 (1972), conclusory and vague allegations will not support a cause of action. *Ivey*
 25 *v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). "Unless it is absolutely clear that no
 26 amendment can cure the defect, ... a pro se litigant is entitled to notice of the complaint's
 27 deficiencies and an opportunity to amend prior to dismissal of the action." *Lucas v. Dep't*
 28 *of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam).

1 For the foregoing reasons, the Court will dismiss Plaintiff's Complaint for failure to
2 state a claim upon which relief may be granted. Within 30 days, Plaintiff may submit a first
3 amended complaint to cure the deficiencies outlined above. Plaintiff must clearly designate
4 on the face of the document that it is the "First Amended Complaint." The first amended
5 complaint must be retyped or rewritten in its entirety and may not incorporate any part of
6 the original Complaint by reference. Plaintiff may include only one claim per count.


7 A first amended complaint supersedes the original Complaint. *Ferdik v. Bonzelet*,
8 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d
9 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat the original Complaint
10 as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised in the original
11 Complaint and that was voluntarily dismissed or was dismissed without prejudice is waived
12 if it is not alleged in a first amended complaint. *Lacey v. Maricopa County*, 693 F.3d 896,
13 928 (9th Cir. 2012) (en banc).

14 **IT IS ORDERED denying** Plaintiff's Application to Proceed in District Court
15 Without Prepaying Fees or Costs (Doc. 2).

16 **IT IS FURTHER ORDERED dismissing** the Complaint (Doc. 1) for failure to
17 state a claim. Plaintiff has **30 days** from the date this Order is filed to file a first amended
18 complaint in compliance with this Order. Plaintiff must pay the full filing fee when filing
19 the amended complaint.

20 Dated this 11th day of June, 2024.

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John C. Hinderaker
United States District Judge